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Mr. Kildue

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Determination to Set Aside Procurement]

FILE: B-202358

DATE: March 17, 1981

MATTER OF: AMF Wyott, Inc.

DIGEST:

1. Determination whether to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA and will not be reviewed by GAO absent showing of fraud or bad faith on part of Government officials.
2. Issues raised concerning contractor eligibility for subcontract award under section 8(a) are basically matters for determination by SBA and not GAO; because of broad discretion afforded SBA by statute, such judgmental decision will not be questioned absent showing of fraud or bad faith on part of Government officials.

AMF Wyott, Inc. (AMF) protests the Defense Logistics Agency's (DLA) setting aside of a proposed contract under the Small Business Administration's (SBA) 8(a) program for award to A&S Tribal Industries (Tribal Industries).

AMF has supplied insulated food containers to the Defense General Supply Center, DLA, for a number of years under previous contracts. Tribal Industries recently submitted an unsolicited proposal to DLA to furnish 5,000 such containers; DLA subsequently initiated a contract with SBA for subcontract award of this procurement to Tribal Industries under the 8(a) program. AMF protests this setting aside, alleging that Tribal Industries is not eligible for award under the 8(a) program because it is affiliated with a large business organization; because it is not managed by socially and economically disadvantaged individuals; and because it is dominant in its field of activity, all in derogation of the pertinent statutes and SBA regulations.

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Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979), authorizes SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let contracts to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations to set aside procurements under section 8(a) unless there is a showing of bad faith or fraud on the part of Government officials. See Maintenance, Incorporated, B-199854, August 27, 1980, 80-2 CPD 155; E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394. No such showing has been made here.

As to AMF's allegation that Tribal Industries is not eligible for subcontract award under the 8(a) program, the matter is for determination by the SBA and not this Office. Black & Decker (U.S.), Inc., B-196406, August 25, 1980, 80-2 CPD 145. SBA has broad discretion in managing the 8(a) program and its judgmental decisions regarding eligibility will not be questioned absent a showing of bad faith or fraud by Government officials. See Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39; American Electronics Laboratories, Inc.--Reconsideration, B-199392.2, September 2, 1980, 80-2 CPD 166; Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132. While we do consider whether in a given case SBA followed its regulations, the allegations here do not suggest any regulatory provision which might have been violated in this case.

Accordingly, the protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel